

**HOUSING AUTHORITY OF THE CITY OF
WILMINGTON NORTH CAROLINA
(WHA)**

RE-BID INVITATION FOR BID (IFB)
SOLICITATION NO.: WHA24.09

PLUMBING SERVICE AUTHORITY WIDE

SUBMISSION DATE: OCTOBER 23, 2024

Prepared By:

**Housing Authority of the City of Wilmington
Procurement and Contracts Department
1524 S. 16th Street
Wilmington, NC 28401**

INDEX**DATE: September 26, 2024**

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PUBLIC ADVERTISEMENT

HOUSING AUTHORITY OF THE CITY OF WILMINGTON NORTH CAROLINA

The Housing Authority of the City of Wilmington North Carolina (WHA) invites proposals from contractors for **PLUMBING SERVICES AUTHORITY WIDE**. Please go to www.wha.net for bid package and further information.

Re-bid Invitation for Bids (IFB)
SOLICITATION NO: WHA24.09

**HOUSING AUTHORITY OF THE CITY OF
WILMINGTON NORTH CAROLINA**

PLUMBING SERVICE AUTHORITY-WIDE

Proposals will be accepted at the Housing Authority of the City of Wilmington North Carolina (WHA Central Office), until date and time noted below.

- Pre-Bid Conference/Site Tour: Central Office. **NOT APPLICABLE**
- Bid Opening: **October 23, 2024, noon** at 1524 S. 16th Street, Wilmington, N.C. 28401
- Specifications/Plans will be available for pickup beginning **Thursday, September 26, 2024**, at the Central Office for a non-refundable charge of \$25.00 for project manual. Pick up, or Download Project Manual from our website at www.wha.net, click on Business Opportunities then IFB – no charge
- Questions; E-mail to cburns@wha.net no later than **October 14, 2024, by noon**

The WHA does not discriminate based on race, sex, age, color, national origin, religion, or disability in its employment opportunities, programs, services, or activities.

WHA reserves the right to reject any or all proposals and to waive informalities and or award to multiple vendors, each site will have a separate contract.

NOTICE TO BIDDERS

The Housing Authority of the City of Wilmington North Carolina (“WHA”) is soliciting proposals from contractors for **RE-BID PLUMBING SERVICE AUTHORITY WIDE.**

Prospective bidders are strongly encouraged to attend the pre-bid conference and tour, scheduled for **Not Applicable** at the Housing Authority’s Central Office located at 1524 South 16th Street, then may be proceeding to the site(s) where the job will be performed.

Proposal due by: **Wednesday, October 23, 2024, at NOON.** The outer-most label of all submittals must be conspicuously marked: **“RE-BID PLUMBING SERVICE AUTHORITY WIDE”.** NO EXCEPTIONS!

The proposal price(s) shall be included as provided in the Project Manual. Unless otherwise specified in the Project Manual. Late bids will be handled in accordance with form HUD-5369B.

A five percent (5%) bid bond is required. Bid bond shall be executed by an acceptable surety, cashier’s check or bank draft payable to the Housing Authority of the City of Wilmington North Carolina and shall be submitted with each proposal of \$25,000 or greater and will be returned 4-5 weeks after board approval of contract. **PERSONAL CHECK NOT ACCEPTED!**

Based on your proposal, all Contractors are required to have the *appropriate license* in order, to perform this project, and the ability to pull permits, if applicable. **No EXCEPTIONS!** All contractors must submit certification that firm is not debarred, suspended or otherwise prohibited from professional practice by any Federal State or local agency.

The WHA does not discriminate based on race, sex, age, color, national origin, religion, or disability in its employment opportunities, programs, services, or activities.

WHA reserves the right to reject any or all bids, or award to multiple vendors and to waive informalities in the bidding. WHA may disqualify any bidders in accordance with its Procurement Policy. Proposals will be available for review after formal contract award is made.

INSTRUCTIONS TO BIDDERS

Proposals must be in accordance with the following instructions, requirements, and procedures to be eligible for consideration:

1. LICENSE:

All Bidders are hereby notified that they must have proper license under applicable State and Local Laws governing their respective trades at the time of submittal of bids.

2. SINGLE CONTRACT PROPOSALS:

Proposals for the Project Work shall be submitted under a Single GENERAL CONTRACT Proposal.

3. DEFINITIONS:

Owner: Housing Authority of the City of Wilmington North Carolina (WHA)

Designer: Housing Authority of the City of
Wilmington or, Licensed Professional engaged by WHA, as
identified in the Project Manual.

Project Manager: Designated representative of WHA.

4. EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK:

Each bidder shall carefully examine the site and premises of the proposed work, the Proposal, the plans, specifications, and special provisions of the Contract Documents before submitting a proposal. The submittal of a proposal shall be considered full evidence that the bidder has made such necessary examinations, that he knows, and understands the conditions relating to the performance of the work required by the Contract Documents. The bidder has made every provision to operate under existing and stipulated conditions and has included all necessary items for the proper execution of work required by the Contract Documents. Sample contract has been reviewed, understood and will not change. By submitting a bid it is understood that contractor agrees to above.

The Owner and Designer shall conduct a pre-bid conference and tour of the Project on the Date and Time specified in the Notice to Bidders. Prospective Bidders are strongly encouraged to attend due to the nature, restrictions, and details of the work. **(Not Applicable)**

Inspections of the Project Site shall be made only during normal business hours and **only by appointment**, arranged a minimum of **24 hours in advance**. Bidders shall not disrupt Owner's operations or residents' privacy in the course of such inspections.

The Project Site is a residential community of the Housing Authority of the City of Wilmington and visiting bidders shall adhere to security policies and cooperate fully with instructions of WHA management officials.

5. UTILITY CHARGES:

No service or connection charge, or fees by serving utility companies are anticipated in connection with the Project work. Coordination and scheduling of work to be performed by serving utilities, if required for relocation or temporary disconnection, shall be the responsibility of the Contractor.

6. CLARIFICATION OF DOCUMENTS/ INTERPRETATIONS:

Should any bidder be in doubt about the precise meaning or intent of any part of the plans, specifications or other contract documents, or find discrepancies or omissions therein, he shall immediately notify the Owner or Designer and request a clarification. Prospective bidders shall request such clarification no later than ten (10) days before the date for submittal of bids.

WHA shall issue a clarification or correction by written addendum to all known bidders and to offices where Bid Documents are exhibited for inspection, no later than seven (7) days before the date for submittal of bids. The bidder in the spaces provided on the Form of Proposal shall acknowledge receipt of such addenda.

Neither the Owner nor the Designer shall be responsible for any oral instructions. All requests for payments involving deviations from the contract must be accompanied by a signed change order from the CEO of the Housing Authority of the City of Wilmington. Without this documentation, invoices for changes will not be paid.

7. PROPOSAL FORMS/ PREPARATION OF PROPOSALS:

Proposals shall be made in strict accordance with the Standard Form of Proposal bound in with these documents and shall be submitted on the supplied forms.

PROPOSAL DOCUMENTS: The following forms shall constitute the Proposal Documents:

Form of Proposal
Form of Bid Bond (\$25,000 and greater)
Form HUD-5369C-Representations, Certifications and Statements of Bidders
Form HUD-2992 - Certification Regarding Debarment and Suspension.
Form HUD-92010 - Equal Employment Opportunity Certification.
Form Non-Collusive
Form WHA- Comparable Project Completion References Form.
Section 3 Documents:
<ul style="list-style-type: none">• <i>Compliance Certification</i>

All required forms shall be completely filled out and properly executed.

The forms shall not be detached from these documents. **However, proposals may be submitted on a separate, exact copy of the Form of Proposal and related documents listed above and shall be given full consideration and will have the same force and effect as if bound thereto.**

Fill in all appropriate blank spaces provided for Amounts, Contract Time, Alternates, Unit Prices, and Addenda as applicable.

Failure to furnish requested itemized prices or alternates may disqualify the proposal.

State the total amount bid in figures and in narrative in the proper spaces on the proposal form.

No lineation, erasures, adjustments, or alterations shall be made to the printed Form of Proposal. In receiving the proposal, the Owner and the Designer will assume that no such alterations have been made, and if any such modifications become apparent afterwards, they shall not be binding upon either of them.

Changes in any entry shall be made by marking through the initial entry and by inserting the corrected entry adjacent thereto. An authorized representative of the bidder shall initial each such correction.

8. EXECUTION OF PROPOSALS: Proposal Documents shall be executed in the following manner:

- A. If by Sole Proprietor, state by adding "Owner" after the name of the person executing the documents.
- B. If by a Partnership, state by adding "Partner" after the name of the person executing the documents.
- C. If by a Corporation, indicate if by the President or by Vice-President and attest by the Secretary. Identify the title of office of the executing entities and impress the corporate seal on each signature page of the documents.
- D. If the proposal is made by a Joint Venture, it shall be executed by each member of the Joint Venture in the above format for sole Owner, Partner, or Corporation, whichever format is applicable.
- E. If a person other than an Owner, Partner, or Officer of a firm holds the Contractor's license, and then the Licensee shall also sign and be a party to the proposal. The title "Licensee" shall be indicated under such signature.

All signatures shall be properly witnessed and sealed.

9. BID SECURITY: Bid Security in an amount not less than five percent (5%) of the base bid amount shall accompany each proposal, for bids exceeding \$25,000, or as stipulated in

Notice to Bidders. The bid guarantee shall be a negotiable certified check, bank draft, or bid bond, payable to the Owner.

10. **SUBMITTAL OF PROPOSALS:** Enclose bid documents in an opaque, sealed envelope of sufficient size to accommodate the documents without folding. Identify the envelope in the upper left-hand corner as follows:

EXAMPLE: PROPOSAL FOR: RE-BID PLUMBING SERVICE AUTHORITY WIDE

Housing Authority of the City of Wilmington

Name of Bidder _____

COMPANY NAME _____

Address _____

Bidder's Lic. No. _____

Address proposals to: **Chauntrell Burns, Sr. VP. of Procurement
Procurement Department
Housing Authority of the City of Wilmington
1524 South 16th Street
Wilmington, NC 28401**

Label the envelope on both sides "**PROPOSAL ENCLOSED- DO NOT OPEN!**"

Deliver or mail proposals to be received by the Procurement Manager at the address specified above and before the stated time for bid opening as specified in the Notice to Bidders.

11. **RECEIPT/OPENING OF PROPOSALS:** At the time and place established for the receipt of bids in the Notice to Bidders, every Proposal for the specified work received by the Owner within the time specified shall be opened, and acknowledged, regardless of any irregularities therein.

The Owner reserves the right to reject any or all proposals and or award to multiple vendors or to waive informalities.

12. **PROTESTS/OBJECTIONS:** Prior to the opening of bids, a bidder shall be allowed to change or withdraw his bid as provided above. In the event of objections or protests before or after opening proposals, contentions shall be addressed in the following manner:

Sections VIII. A and B of Procurement Policy

A. General

It is the WHA's policy to resolve all contractual issues informally at the Authority level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the Authority level. When appropriate, the Authority may consider the use of informal discussion between parties by individuals who did not participate substantially in the matter in dispute, to help the differences. HUD will only review protests in case of violations of Federal law or regulations and failure of the Authority to review a complaint or protest.

B. Bid Protests

Any actual or prospective contractor may protest the solicitation or award of a contract only for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within 10 calendar days after the contract award, or the protest will not be considered. All bid protests shall be in writing and submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. A written protest shall contain, at a minimum, the name, address and phone number of the protester; identification of the procurement, including solicitation or contract number; a statement of the reasons for the protest; supporting exhibits, evidence, or documents to substantiate and arguments; and the form of relief requested. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

The WHA shall issue a decision as expeditiously as possible after receiving all relevant information requested. If the protest is granted, the solicitation or proposed award will be canceled or revised to comply with the protest decision. If the contract has already been awarded, it may be terminated for convenience and the contract re-awarded to the next eligible offeror; the procurement may be resolicited; or, if the WHA determines in writing that based on compelling circumstances such action would not be in the best interests, may let the award stand and pay the successful protestor bid and proposal costs, along with the costs of filing and pursuing the protest. If the protest is not granted, the Contracting Officer will issue a written decision with justification for the denial and explain the appeal rights of the protestor.

13. AWARD OF CONTRACT: If the Owner elects to award a Contract based on proposals received, the Contract will be awarded to the responsible, responsive bidder submitting a qualified proposal taking into consideration standards of quality, performance and the contract time specified in the proposal documents and may award to multiple vendors.

- The award shall be made as soon as practicable after the receipt of proposals as provided elsewhere in these Instructions. Contracts terms shall be for 1 year with 4

one-year extensions if agreed upon based on the date of the executed contract.

- Should the successful bidder fail to execute an agreement within 10 days, the contract may be offered to the responsible, responsive bidder submitting the next qualified proposal, at the Owner's discretion.
- The award may be made to a responsible, responsive bidder. A responsible, responsive bidder must follow:

Sections VI. A. 1-7 of procurement policy

A. Contractor Responsibility

WHA shall not award any contract until the prospective contractor, i.e., responsible, responsive bidder or successful offeror, has been determined to be responsible, responsive. A responsible, responsive bidder/offeror must:

1. Have adequate financial resources to perform the contract, or the ability to obtain them. WHA may request additional financial information to review from an apparent low bidder after it opens all submitted bids (WHA will check their credit reports and verify their lines of credit and account balances with the financial institution officer servicing the account.)
2. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; (Verify experience with other customers. Request copies of any audits. Verify that necessary personnel will be available to work on the WHA's contract).
3. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; (Request evidence that the offeror has all the equipment and facilities he/she will need or the capability to obtain them. Visit the offeror's place of business or other job sites to verify equipment and facilities. Contact equipment dealers and/or facility owners from whom the offeror indicates that he/she will rent or lease the equipment or space); and
4. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments; (verification by information on all other active contracts the offeror is performing and status).
5. Have a satisfactory performance record; (WHA will require offerors to submit contract information for recent contracts they have performed for other customers and contact them to ascertain the offeror's quality of performance, including timeliness of delivery/completion, quality of work, compliance with terms and conditions of the contract, and cost control, if applicable. Inquire of past customers whether they would contract with the offeror again and why. Research the offeror's performance history with the WHA).

6. Have a satisfactory record of integrity and business ethics; (verification with the Better Business Bureau and various State and Federal Government officers) and
7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including but not being suspended or debarred from Federal Programs, or not being under a HUD-imposed Limited Denial of Participation to a contractor. This HUD website www.hud.gov/enforce. WHA will check to determine if a contractor has been suspended or debarred from participation in Federal Programs. The GSA website is <http://epls.arnet.gov>. WHA will check to see if the contractor has been suspended by WHA from bidding on WHA's bid/offers.

14. **BIDDER QUALIFICATION:** Before awarding a contract, the Owner reserves the right to require the apparent qualified bidder to qualify himself to be the responsible bidder by furnishing such relevant information, which may include any or all of the following:

- Permanent name, address and telephone of place of business.
- Length of time the organization has been in business under its present name and trade, and the number of regular employees with proper qualifications for the required work.
- Financial statement with balance sheet and income statement or other financial information satisfactory to the Owner, upon request. **(This will not be made public.)**
- Proof of satisfactory performance of projects of similar scope, requiring specialized skills, and experience and workmanship standards required for the work specified.
- List of names and license numbers of organization members or employees who hold trade or professional licenses or credentials.
- The name and home office address of the Surety proposed, and identification of its authorized agent licensed in North Carolina.
- List of principal materials and identification of suppliers and sub-contractors entering the proposed contract work.
- **Any other information the Owner may consider relevant** to the bidder's qualifications for the performance of the work required by the terms of the Contract Documents.
- Should the Owner adjudge that the apparent low bidder is not the lowest responsible, responsive bidder by virtue of the above qualifications, which bidder will be so notified, and his bid security will be returned to him without prejudice.

15. **NOTIFICATION OF AWARD:** The Owner will notify the successful bidder in writing that his bid has been accepted and of the intent to award the contract, which shall constitute the Notice of Award.

The Notice of Award, if an award were made, will be issued within sixty days (60) after the receiving of bids, except that the Owner reserves the right to request from the successful

Bidder an extension of the decision to award the contract for such reasonable time beyond the stated 45 days as may be mutually agreeable to both parties.

16. EXECUTION OF CONTRACT: Following the issuance of the Notice of Award and approval of the Materials and Sub-Contractor List, two (2) counterparts of the prepared Contract Documents will be sent to the successful Bidder for execution.

The Bidder shall promptly execute all counterparts of the contract and return them, together with the specified Bonds and Insurance Certificates and Power of Attorney attached to each counterpart, to the WHA / Designer for review within ten (10) days.

As soon as practicable after receipt of the executed, verified documents, the Owner shall complete the execution of the Contract and return to the Contractor his counterpart of the Documents.

Should the successful bidder fail to execute an agreement, the contract may be offered to the next responsible, responsive bidder submitting the next qualified proposal, at the Owner's discretion.

The official Contract Forms, Bond Forms, Insurance Forms, and related documents are included in the Project Manual.

END INSTRUCTIONS TO BIDDERS

Service Contract Act: Regulations and Requirements

1. SCA - Statute and Regulations. The WDOL.GOV Library Page contains a link to DOL's website and to a copy of the statute (41 U.S.C. 351-358) and the pertinent SCA regulations (Title 29 CFR Part 4, *Labor Standards for Federal Service Contracts*). Other DOL regulations address related requirements, for example: Title 29 CFR Part 541 for the definition of the exemption for "executive, administrative, or professional employees"; Title 29 CFR Part 785 for regulations defining "hours worked"; Title 29 CFR Part 531 for regulations defining "wages"; and Title 29 CFR Part 778 for regulations defining overtime or premium pay for workers working in excess of a standard workweek.
2. Federal Acquisition Regulations (FAR) and Supplements. The WDOL.GOV Library Page contains links to federal acquisition regulations including the supplements issued by each federal contracting agency. WDOL.GOV users are urged to familiarize themselves not only with DOL regulations, but also with the pertinent acquisition regulations pertaining to specific contract actions (including statements of work, modifications to the contract, options, extensions, and similar actions).
3. Application of SCA. SCA establishes standards for prevailing compensation and safety and health protections for employees performing work for contractors and subcontractors on service contracts entered into with the federal government and with the District of Columbia. SCA provisions are applicable to contracts the principal purpose of which is to provide services in the United States through the use of service employees.

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4. SCA Wage and Benefit Requirements
 - a. a. For service contracts \$2,500 and under, SCA Section 2(b)(1) requires payment of the minimum wage in the Fair Labor Standards Act (reference FAR Section 22.1002-4).
 - b. b. For service contracts over \$2,500, SCA requires the contracting officer to incorporate into the contract a requirement to pay prevailing wages and benefits issued by DOL in the form of "wage determinations" (reference FAR Sections 22.1006, 22.1007 & 22.1008).

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5. Types of SCA WDs. The WDOL.GOV database contains the latest WDs developed by the DOL. The SCA database is updated each Tuesday (by 1:00 pm ET) with all current revisions. DOL issues two types of SCA WDs - prevailing wage WDs, and WDs based on Collective Bargaining Agreements (CBAs) covered by SCA Section 4(c).
 - a. Prevailing Wage SCA WDs. There are several sub-types of "prevailing" WDs as follows:
 1. Standard WDs are generic WDs listing over 300 different classifications (from several occupational groups, e.g., Clerical and Administrative, Technical Occupations, Information and Arts, Transportation). Each Standard WD reflects wages and fringe benefits found by DOL to be prevailing in a specific locality¹. The wage rates and health and welfare (H&W) rates are the same on each Standard WD for a locality. However, the method by which a contractor must comply with the H&W rate is different². Compliance with the H&W rate on all "odd numbered" Standard WDs (i.e., WD No. 2005-2103 or WD No. 2005-2113) requires payment of the minimum H&W rate for each hour paid for each employee, up to a maximum of 40 hours per week. [See 29 CFR 4.175(a)] Compliance with the H&W rate on all "even numbered" Standard WDs (i.e., WD No. 2005-2104 or WD No. 2005-2114) requires the contractor to contribute an average of the stated H&W rate per hour, computed on the basis of all hours worked by service employees on the contract. [See 29 CFR 4.175(b)] The latter method, "average cost H&W", was specified on WDs with the old "high benefit" rate that was grandfathered as part of the 1996 DOL rulemaking. (See "All Agency Memorandum No. 188" dated May 22, 1997 on the WDOL.gov Library Page and 29 CFR 4.52(d)). When the survey data for odd numbered ("per employee") WD exceeded the grandfathered "high benefit" rate of \$2.56 per hour, the Department of Labor increased the fringe benefit rates on all WDs to reflect the new survey data; however, DOL also retained the two different methods for determining compliance. The averaging H&W methodology continued to be applied to contracts for which the old \$2.56 high benefit rate had been applicable (see AAM No. 196 on the WDOL.gov Library Page).

When selecting a Standard WD, the contracting officer must select the Standard WD with the appropriate health and welfare method. The guidelines for selection are as follows:

- a. First Guideline: Were the services previously performed under a contract that incorporated an even numbered Standard WD? If so, for all following contract periods and follow-on contracts for substantially the same services that will be performed in the same locality, select the even numbered Standard WD for that same locality. [Reference -- 29 CFR 4.52(d)] When following the current WD selection menu, this is the reason for the question regarding whether the services were "performed under an SCA wage determination that ends in an even number".
- b. Second Guideline: If the services were not previously performed under contract using an even numbered Standard WD, or if the services were not previously performed under an SCA-covered contract, then select the odd numbered Standard WD for that locality. When following the current WD selection menu, answering the menu questions correct should obtain the odd numbered WD response.

- c. Hawaii. Because Hawaii state law requires the payment of health insurance, SCA H&W rates are different in Hawaii, but the application of the two levels is the same as noted in the above paragraphs.
 - d. WDOL.gov "Selecting SCA WDs" process asks the user to identify if the services were previously performed at the locality in an SCA-covered contract, and if in the preceding contract or contract period the Standard WD was odd or even numbered. Therefore, it is necessary to know the WD "history" of a service contract requirement, even if the contract was awarded or administered by a different contracting activity, including those that will be awarded by a different government agency. If you have any questions regarding the appropriate H&W level to select for a specific contract action, contact the contracting officer or the designated agency labor advisor for assistance.
2. Non-Standard WDs. Non-Standard WDs are issued by DOL to reflect prevailing wages and benefits in specific service industries in designated localities. Non-Standard WDs may not be used in contracts for services other than those specified in the Non-Standard WD description; conversely, Standard WDs may not be used in contracts designated for Non-Standard WDs. In the WDOL.GOV Program selection process, the user will be asked to determine if the contract services are "non-standard" as designated by DOL. The menu will provide a drop-down listing of such designated Non-Standard services. The WDOL.GOV User's Guide provides a listing of non-standard services at "Appendix A, SCA Non-Standard WDs".
 3. Contract-Specific or Special SCA WDs. There are a few, unique service contracts where DOL will issue contract-specific wage and benefit rates under SCA. An example of a contract-specific WD is a sole-source contract with a county, state or municipality where wages and benefits are already established. The SCA WD applicable to such a contract will be the rates established by the sole-source contractor. (Not all sole-source contract actions are subject to a Contract-Specific WD; only those contracts awarded to contractors similar to government organizations.) If a contracting officer has determined that neither a Standard WD nor a Non-Standard WD is appropriate for a particular contract action, the contracting officer should request an appropriate contract specific or special WD from DOL using the e98 system. DOL has sole authority to determine the appropriate wage and benefit rates for each contract action and will either issue a WD reflecting such rates or notify the contracting agency that there is no wage determination applicable to the contract.
- b. SCA WDs Based on Collective Bargaining Agreements (CBAs)
1. If a fully executed Collective Bargaining Agreement (CBA) has been established as the predecessor contractor's Collective Bargaining Agreement (CBA) as specified in 29 CFR 4.163(f) and that Collective Bargaining Agreement (CBA) is timely [see section 8 of this guide] received by the contracting officer, the contracting officer must prepare a Collective Bargaining Agreement (CBA) WD that references the Collective Bargaining Agreement (CBA) (by employer, union, contract number and effective dates) and incorporate into the successor contract action the Collective Bargaining Agreement (CBA) (complete copy of the Collective Bargaining Agreement (CBA) and all addenda) along with the Collective Bargaining Agreement (CBA) WD as a cover page. The Collective Bargaining Agreement (CBA) wage and benefit provisions become controlling for wage determination purposes under section 4(c) of the SCA. 29 CFR 4.163(f) states in pertinent part "4(c) will be operative only if the employees who worked on the predecessor contract were actually paid in accordance with the wage and fringe benefit provisions of a predecessor contractor's collective bargaining agreement. Thus, for example, section 4(c) would not apply if the predecessor contractor entered into a collective bargaining agreement for the first time, which did not become effective until after the expiration of the predecessor contract." Furthermore, DOL All Agency Memorandum 159 provides that Collective Bargaining Agreement (CBA)s that contain prohibited contingencies will not be effective for section 4(c) purposes. Therefore, it is recommended that the Collective Bargaining Agreement (CBA) be carefully reviewed to determine if it should be effective for wage determination purposes under section 4(c) *prior* to utilization of the WDOL process for creating a Collective Bargaining Agreement (CBA)-based wage determination. Thus the Collective Bargaining Agreement (CBA) should be reviewed for (1) timeliness, (2) that it is properly signed & executed by both parties to the Collective Bargaining Agreement (CBA), (3) that it has been properly established as the predecessor contractor's Collective Bargaining Agreement (CBA) under which service employees were paid in the prior period of contract performance, (4) that it does not contain prohibited contingencies per DOL's AAM #159, (5) and that it has been reviewed for possible "variance" under FAR 22.1013 & 22.1021. Lastly, it is important to note that a contractor may be both the predecessor contractor and the successor contractor for wage determination purposes, particularly where option periods and extensions are issued. It is not necessary to send a copy of the Collective Bargaining Agreement (CBA) to DOL. The WDOL.gov database will not contain a copy of the Collective Bargaining Agreement (CBA) itself; it will only retain copies of the cover Collective Bargaining Agreement (CBA) WDs. Contractors and other WDOL.gov users must review specific solicitations or contracts (or contact the contracting officer) in order to determine if a particular Collective Bargaining Agreement (CBA) is applicable under SCA to that action.
 2. The WDOL.gov Program menu includes a form for the contracting officer to complete in order to prepare the cover Collective Bargaining Agreement (CBA) WD for each specific contract action, as required by SCA. The contracting officer must prepare a separate Collective Bargaining Agreement (CBA) WD for each SCA-covered Collective Bargaining Agreement (CBA) applicable to a contract action (including separate Collective Bargaining Agreement (CBA) WDs for prime contractor and for subcontractor(s)).

6. Monitoring the WDOL Program for SCA WD Revisions.

- a. Effective SCA WD revisions are those WDs considered received timely by the contracting agency. See Section 7 of this guide for the timeliness criteria.
- b. Effective SCA WDs are required to be incorporated into contracts or contract actions. That date will be found as a header at the top of the WD obtained via WDOL.
- c. Under the WDOL.GOV Program, "receipt" date of a new or revised SCA WD is the first date at which that WD appears on the WDOL.GOV Program SCA Database.
- d. Under the WDOL Program, DOL will publish all SCA WD revisions for a given week on the WDOL.GOV Program database each Tuesday.
- e. The contracting officer must monitor the WDOL.GOV Program SCA Database regularly to determine if a selected WD has been revised and may be applicable (timely) to the contract action.
- f. WDOL.GOV ALERT SYSTEM. To ensure that the contracting officer (or other interested party) is aware of revisions made by DOL to SCA WDs (Standard WDs and Non-Standard WDs) selected for a specific contract action, the WDOL.GOV user may register for automatic email notification of such revisions. Upon selection of an appropriate SCA Standard or Non-Standard WD, the user will be offered the opportunity to request email notice of future revisions for a specific period of time, or until a specific date. Contracting officers are encouraged to request this automatic notification process in order to be aware of timely revisions applicable to contract actions.
 1. At the Alert Service menu, the user will be asked to provide an email address for the WDOL.gov to use in providing notification of a revision to a WD. The user may also provide an "alert identifier" which will appear in the WDOL.gov notification and will assist the user in relating the newly revised WD to a specific contract or solicitation, or other area of interest.
 2. Users requesting the Alert Service will receive an email notice each time the selected SCA WD is revised until the Alert Service request expires. CAUTION: The Alert Service does not relieve the contracting officer of the obligation under SCA and its regulations to use timely received new or revised SCA WDs in contract actions.
- g. Archived SCA WDs. Once DOL revises an SCA WD, the most current revision will be published on the WDOL.GOV database. Prior revisions, no longer current, will be maintained in the "Archived SCA WD" database for information purposes only. Contracting officers should not use an archived WD in a contract action without prior approval of DOL. Contact DOL at telephone number 866-487-9423.

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7. Timely Receipt of New or Revised SCA WDs (Title 29 CFR Part 4, Section 4.5 and FAR Section 22.1012).

- a. For contract actions resulting from other than sealed bidding:
 1. A revised SCA WD shall be effective if it is received by the contracting agency before date of award (or date of modification for an option or extension).
 2. If a revised WD is received after award, it shall NOT be effective if contract performance starts less than 30 days from date of award or modification.
 3. If a revised WD is received after award and performance starts more than 30 days from award or modification date, the WD (or Collective Bargaining Agreement (CBA)) will be effective if received no later than 10 days prior to start of performance.
 4. With reference to SCA-covered Collective Bargaining Agreement (CBA)s, the contracting officer must provide written notification to unions and contractors (in accordance with Title 29, CFR Part 4, Section 4.1(b)(3), and FAR Section 22.1010) of the pending contract action and estimated date. A sample letter for notification is provided at WDOL.GOV User's Guide, Appendix B, FAR 22.1010 Notification".
- b. For contract actions resulting from sealed bidding:
 1. A revised SCA WD shall NOT be effective if received by the contracting agency less than 10 days prior to opening of bids, unless there is sufficient time to amend the solicitation and incorporate the revised WD.

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8. Timely receipt of Collective Bargaining Agreement (CBA)s (Title 29 CFR Part 4, Section 4.1(b) and FAR Section 22.1012).

- a. The obligation of a successor contractor to pay its employees no less than the wages and fringe benefits required under the predecessor contractor's Collective Bargaining Agreement (CBA) is a statutory requirement of SCA Section 4(c). DOL has applied a limitation on the self-executing aspects of Section 4(c) (reference Title 29 CFR Part 4, Section 4.1(b)). This limitation only applies, however, if the contracting officer has given both the incumbent (predecessor) contractor and the employees' collective bargaining representative written notification at least 30 days in advance of all estimated procurement dates. A sample letter for notification is provided at Appendix B, "FAR Section 22.1010 Notification".
- b. For contract actions resulting from other than sealed bidding:
 1. A revised Collective Bargaining Agreement (CBA) shall apply to the successor contract if it is received by the contracting agency before the date of award (or date of modification for an option or extension).
 2. If a Collective Bargaining Agreement (CBA) is received after award, it shall NOT apply to the successor contract if contract performance starts less than 30 days from date of award or modification.

3. If a Collective Bargaining Agreement (CBA) is received after award and performance starts more than 30 days from award or modification date, the Collective Bargaining Agreement (CBA) shall apply to the successor contract if received no later than 10 days prior to start of performance.
- c. For contract actions resulting from sealed bidding:
 1. A revised Collective Bargaining Agreement (CBA) shall NOT apply to the successor contract if received by the contracting agency less than 10 days prior to opening of bids, unless there is sufficient time to amend the solicitation and incorporate the revised WD.

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9. Conformances (Requesting Authorization of Additional Classification and Rate). DOL issues WDs under SCA using available statistical data on prevailing wages and benefits in a locality. On occasion, the WD does not provide a rate for a particular occupation needed in the performance of the contract. Because of this, SCA provisions contain a conformance procedure for the purpose of establishing a SCA-enforceable wage and benefit rate for missing occupational classifications.
 - a. Contractors are responsible for determining that the employees performing work on a contract are in fact performing duties that fall within one or more of the occupational classifications listed on the applicable SCA WD. If a classification considered necessary for performance of the work is missing from the WD applicable to the contract, the awarded contractor must initiate a request for approval of a proposed wage and benefit rate. Generally, the contractor initiates the request by preparing an **SF-1444, Request for Authorization of Additional Classification and Rate**, at the time of employment of the unlisted classification. (Reference Title 29 CFR Part 4, Section 4.6(b) and FAR 22.1019) The contractor completes blocks 2 through 15 on the form. Requests may be submitted without the form, but must contain the required information.
 - b. Contractors must request employees, if present, or their designated representative, to sign block 16 noting the employee's concurrence or disagreement with the contractor's proposed wage and benefit rate. A statement supporting a recommendation for different rates may accompany any indication of disagreement. The "designated representative" is generally a union representative; it cannot be the contractor's representative or personnel officer.
 - c. The contractor submits the completed SF-1444 to the contracting officer. The contracting officer reviews the form for completeness, and signs the agency's concurrence or disagreement with the contractor's proposal. A statement supporting a recommendation for different rates may accompany any indication of disagreement.
 - d. The contracting officer then submits the request to DOL for approval. The contractor must pay the proposed wage and benefit rate pending response from DOL. When DOL responds to the contracting officer, the contracting officer provides a copy of the response to the contractor with instructions to provide each employee a copy or to post it in the work area (with the applicable WD). The prime contractor must provide a copy of the determination to subcontractor(s), if any, that may employ workers in the conformed classification under the contract. If DOL responds with an approved rate that is higher than the rate proposed by the contractor, the contractor and/or subcontractor(s) must pay such rate retroactive to the start of performance of that classification.
 - e. DOL's Service Contract Act Conformance Guide provides further guidance on the process.

^{11a} If the user knows the city where the work will be performed, but needs help in identifying the county in which that city is located, the web sites for the U.S. Geological Survey (USGS) and the National Association of Counties (NACO) provide tools that may be used to identify the county.

¹² SCA Health and Welfare (H&W) Rates. On June 1, 1997, DOL initiated a new methodology to determine an appropriate, single SCA H&W benefit rate for SCA Standard WDs. The new, lower rate, listed on the odd-numbered SCA WDs (i.e., 1994-2103, or 1994-2113), was originally established at \$1.91 per hour, to be revised in stages over several years (each increase to be published annually on June 1st). DOL continued to publish the SCA Standard WDs, even-numbered (i.e., 1994-2104 or 1994-2114), listing the pre-existing, higher H&W rate of \$2.56 per hour until the lower H&W rate reached or exceeded the \$2.56 per hour. The old rate listed on the even-numbered Standard WDs continued to be applicable to certain contract actions in accordance with DOL's "All Agency Memorandum #188" published in the Federal Register on December 30, 1996 (page 68647). DOL will continue to increase both Standard WD H&W rates while completing a study to determine the appropriate application of the new methodology adopted in 1997. Following the guidance in the Users Guide and the "Selecting SCA WDs" on WDOL.gov will assist the user in obtaining the appropriate WD for specific contract actions."

FORM OF PROPOSAL FOR: GENERAL NON-CONSTRUCTION CONTRACT
 Solicitation No. **WHA24.09 – October 23, 2024**

PROJECT: **RE-BID PLUMBING SERVICE AUTHORITY WIDE**

Housing Authority of the City of
 Wilmington North Carolina

ID Code: NC001

SUBMITTED TO: Chauntrell Burns, Sr. VP of Procurement
 Housing Authority of the City of Wilmington
 1524 South 16th Street
 Wilmington NC 28401

SUBMITTED BY: Bidder's Company Name: _____
 Name: _____
 Address: _____
 E-mail Address: _____
 Lic. No.: _____ as applicable
 Phone #: _____
 Fax #: _____
 Date: _____

In compliance with the request for proposals issued by the WHA, the undersigned as Bidder hereby proposes to furnish all labor and materials, equipment, operations and incidentals, and to perform all work for the complete execution of entering into the **GENERAL CONTRACT** for **PLUMBING SERVICE AUTHORITY WIDE**, in strict accordance with Plans (if applicable), Specifications, Contract Documents, applicable codes and regulations to the full and entire satisfaction of the Owner for the consideration of the following amount:

REPAIRS AND SERVICE

- PRICE PER HOUR, PER MAN \$ _____
- OT PRICE PER HOUR, PER MAN \$ _____
- COST + % ON PARTS % _____
- **ALL BILLING SHALL BE BASED ON ¼ HOUR INCREMENTS**

Replacement Cost Turnkey

- RANKIN 40 GALLON TALL ELECTRIC \$ _____ Warranty _____ Years
- CREEKWOOD 40 GALLON TALL ELECTRIC \$ _____ Warranty _____ Years
- VISTA VILLAGE 40 GALLON TALL ELECTRIC \$ _____ Warranty _____ Years
- HILLCREST 40 GALLON TALL ELECTRIC \$ _____ Warranty _____ Years
- GLOVER PLAZA 40 GALLON TALL ELECTRIC \$ _____ Warranty _____ Years
- WOODBRIDGE 40 GALLON TALL ELECTRIC \$ _____ Warranty _____ Years
- EASTBROOK 40 GALLON SHORT ELECTRIC \$ _____ Warranty _____ Years
- HOUSTON MOORE 40 GALLON TALL GAS \$ _____ Warranty _____ Years
- ROBERT TAYLOR SENIOR 40 GALLON SHORT \$ _____ Warranty _____ Years
- POINTE AT TAYLOR HOMES 40 GALLON TALL \$ _____ Warranty _____ Years

- MANUFACTURE BRAND NAME QUOTING _____

TIME OF COMPLETION shall be as specified in the Supplementary General Conditions, Supplement Clause 25, and Contract Period.

The Undersigned, as Bidder, hereby declares that the only person or persons interested in this proposal, as principal or principals, is or are named herein, and that no other party or parties than those herein identified have any interest in this proposal or in the contract which may be entered into as a result of acceptance of this proposal; and that this proposal is made without connection with any person, company, corporation or parties making a bid or proposal; and that this proposal is in all respects fair and in good faith without collusion or fraud.

The Bidder further declares that he has examined the Site of the Work and informed himself fully with all conditions pertaining to the place where the Work is to be performed; that he has examined the Drawings, Specifications and Instructions for the Work and the Contract Documents relative thereto, and has read all special provisions furnished prior to submitting proposal, and that he fully understands and has made every provision to operate under the conditions relative to the Work required by the Contract Documents.

The undersigned further states that he is a duly licensed contractor in the State of North Carolina under applicable statutes governing his trade, and that all fees, licenses, permits, and charges pertinent to the submission of this Bid have been paid in full.

If written notice of the acceptance of this Bid is delivered to the undersigned within ninety(90) days after the date of Opening of the Bids, or any time thereafter before the specified time for retention of the Bids expires, the undersigned will, within ten (10) days after the date of such notice, execute and deliver a contract in the Form of Contract bound in with the Specifications, and provide Performance and Payment Bonds and Certificates of Insurance in accordance with the requirements prescribed in the Supplementary General Conditions.

The undersigned further agrees that in the case of failure on his part to execute the said Contract, Bonds and required Certificates of Insurance within ten (10) consecutive calendar days after written notice being given of the Award of the Contract, the submitted proposal shall be disqualified, and the Bid Security in the form of cash, certified check or bid bond shall be paid into the funds of the Owner's account set aside for the project as liquidated damages for such failure, and a contract may be offered to the bidder submitting the next qualified proposal at the discretion of the Owner; otherwise the Bid Security accompanying this proposal shall be returned to the undersigned.

The Bidder further proposes and agrees hereby to commence work under his Contract on a date to be specified in a written order of the Owner and to, fully complete all work required by the Contract within the consecutive calendar days stated in this proposal, from and including said date. For each day in excess, thereof applicable liquidated damages shall be assessed as stipulated in Supplementary General Conditions.

In submitting this proposal, it is understood that the Owner reserves the unqualified right to reject all proposals, and to waive informalities or irregularities in the bids.

Respectfully submitted this _____ day of _____, 2024

Witness: _____ Firm or Corporation making bid

(Partnership/Proprietorship) By: _____

Attest: _____ Title: _____

(Corp. Sec. or Asst. Sec. Only) (Owner, Partner, or Corp. Pres. or Vice-Pres. Only)

Address: _____

(Corporate Seal) _____ License No.: _____

The Bidder declares that he has received, reviewed, and complied with all instructions issued in the following addenda:

Addenda Received and Considered in Preparing the Bid: (Initial as appropriate)

Addendum No. ___ Date _____ Initial _____
Addendum No. ___ Date _____ Initial _____
Addendum No. ___ Date _____ Initial _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned,

(Name of Principal)

as PRINCIPAL, and _____
(Name of Surety)

as SURETY, are held and firmly bound unto the Housing Authority of the City of Wilmington, NC, P. O. Box 899, or 1524 South 16th Street, Wilmington, NC hereunder called the "Local Authority", in the penal sum of _____ Dollars, lawful money of the United States, for the payment of which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas, the principal has submitted the accompanying bid, dated _____, 2024, for

CONTRACT No: WHA24.09
PLUMBING SERVICE AUTHORITY WIDE

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within ninety (90) days after the said opening, and shall within the period specified therefore, or, if no period be specified within ten (10) days after the prescribed forms are presented to him for signature, enter into a written Contract with Local Authority in accordance with the bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract; or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay the Local Authority the difference between the amount specified in said bid and the amount of which the Local Authority may procure the required work or supplies or both, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____, 2024, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

_____ **(SEAL)**

(Individual Principal)

_____ **(SEAL)**

(Business Address)

_____ **(SEAL)**

(Individual Principal)

_____ **(SEAL)**

(Business Address)

ATTEST:

(Secretary or Treasurer) _____
(President or Vice-President)

(Business Address)

By: _____

(Affix Corporate Seal)

ATTEST:

(Corporate Surety)

By: _____

(Affix Corporate Seal)

Power-of-Attorney for person signing for Surety Company must be attached to bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ of the Corporation named as Principal in the within bond; that _____, who signed the said bond on behalf of the Principal was then _____ of said Corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested to for and in behalf of said corporation by authority of its governing body.

(Corporate Seal)

**PROJECT COMPLETION REFERENCE FORM
PLUMBING SERVICES AS LISTED**

Include a letter from each reference, on their letter head, with contact information and an original signature.

NAME OF PROJECT	LOCATION	Est. Value	REFERENCE
1. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____
2. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____
3. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____
4. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____
5. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____

NON-COLLUSIVE AFFIDAVIT OF PRIME BIDDER

PLUMBING SERVICES AS LISTED

**Housing Authority of the
City of Wilmington North Carolina
P.O. Box 899
Wilmington, NC 28402**

State of _____

County of _____

_____, being first
duly sworn, deposes and says: That he is

(a Partner or Officer of the Firm of, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived, or agreed directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or any other bidder, or to fix any overhead, profit or cost element of said bid price, or that of any other bidder or to secure any advantage against the Housing Authority of the City of Wilmington, NC or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

(Signature of Bidder, if Bidder is an Individual)

(Signature of Partner, if Bidder is a Partnership)

(SEAL)

(Signature of Officer, if Bidder is a Corporation)

NOTARY

Subscribed and sworn to before me this ____ day of _____, 20__

My Commission expires: _____

CONTRACTOR'S SECTION 3 COMPLIANCE CERTIFICATION

The undersigned makes this certification with full knowledge that its contents will be used in the expenditure of funds provided by the United States Government. Under penalty of perjury, I hereby state:

1. I am the _____ of _____,
(Owner, Partner, Officer, Representative, Agent)
the Bidder that has submitted the attached Bid; and

2. My company adheres to Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u which requires, to the greatest extent feasible, that a "good faith effort" is given to identifying small businesses located within the boundaries of the Section 3 service area, making them aware of contracting opportunities, encouraging their participation, and actually awarding contracts to Section 3 business concerns.

3. Efforts will be made to undertake outreach activities intended to encourage participation by Section 3 residents in training and employment opportunities, to include but not limited to:

A. Advertising in local media;

B. Distributing flyers on training and job opportunities to public housing sites and posting flyers in common areas;

C. Informing labor organizations and private job training agencies of potential jobs and contract opportunities;

D. Participation in job information meetings and workshops to help Section 3 resident's complete applications and learn interviewing techniques.

Signature of Authorized Certifying Official: _____

Title: _____ Date: _____

Company

Name: _____

SECTION 3 DEFINITIONS:

A. Section 3 Resident:

Low- or very low-income person who resides in the Wilmington Metropolitan Statistical Area (MSA) in which Section 3 covered assistance is expended. Wilmington MSA consists of New Hanover and Brunswick Counties.

B. Section 3 Business Concern:

A business concern that is:

1. Fifty one percent (51%) or more owned by Section 3 residents; **or**
2. Whose permanent, full-time employees include persons, at least thirty percent (30%) of whom are currently Section 3 residents, or were Section 3 residents within three years of the date of first employment with the business concern; **or**
3. That provides evidence of a commitment to subcontract in excess of twenty five percent (25%) of the total bid/proposal price awarded to business concerns that meet the qualifications set forth in paragraphs 1 or 2 in this definition of a Section 3 business concern.

C. Section 3 Covered Assistance:

1. Public and Indian housing development assistance provided pursuant to Section 5 of the 1937 Act;
2. Public and Indian housing operating assistance provided pursuant to Section 9 of the 1937 Act;
3. Public and Indian housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
4. Assistance provided under any HUD housing or community development program. Assistance expended for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement), housing construction or other public construction projects.

D. Section 3 Covered Contract:

A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e. the installation of the furnace) and is thereby covered by Section 3.

II. ORDER OF PROVIDING PREFERENCES

A. Section 3 Residents

Efforts shall be directed to providing training and employment opportunities to Section 3 residents in the following order of priority:

1. Residents of the Housing Authority of the City of Wilmington development or developments for which the Section 3 covered assistance is expended (category 1 residents).
2. Residents of other Housing Authority of the City of Wilmington developments managed by the Housing Authority of the City of Wilmington (category 2 residents).
3. Participants in HUD Youthbuild programs being carried out in the Wilmington MSA (category 3 residents).
4. Other Section 3 residents of New Hanover County (category 4 residents).
5. Other Section 3 residents of Brunswick County (category 5 residents).

A Section 3 resident seeking employment provided by this part shall certify, in a form suitable to the Housing Authority of the City of Wilmington, that they are a Section 3 resident as defined in paragraph I.A. of this document.

B. Section 3 Business Concerns

Efforts shall be directed to award contracts to Section 3 business concerns in the following order of priority.

1. Business concerns that are fifty one percent (51%) or more owned by residents of the Housing Authority of the City of Wilmington developments for which the Section 3 covered assistance is expended, or whose full-time, permanent workforce includes thirty percent (30%) of these persons as employees (category 1 business);
2. Business concerns that are fifty-one percent (51%) or more owned by residents of the other Housing Authority of the City of Wilmington developments where Section 3 covered assistance is expended, or whose full-time, permanent work force includes thirty percent (30%) of these persons as employees (category 2 business);
3. HUD Youth Build programs being carried out in the MSA in which the Section 3 covered assistance is expended (category 3 business); and
4. Business concerns that are fifty-one percent (51%) or more owned by Section 3 residents or whose permanent, full-time workforce includes no less than thirty percent (30%) Section 3 residents or that subcontracts in excess of twenty five percent (25%) of the total amount of subcontracts to business concerns identified in paragraphs (1) and (2) of this section. (category 4 business).

A business concern seeking to qualify for a Section 3 contracting preference shall certify, in a form suitable to Housing Authority of the City of Wilmington, that the business concern is a Section 3 concern as defined in paragraph I.B. of this document.

III. SECTION 3 GOALS

Employment Opportunities

Thirty percent (30%) of the aggregate number of new hires for the one-year period beginning in FY 1997 (October 1, 1996, through September 30, 1997), and **continuing each year thereafter.**

Contracting Goals

At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work, for maintenance, repair, modernization or development of public housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and At least three percent (3%) of the total dollar amount of all other Section 3 covered contracts.

Good Faith Effort

Each contractor and subcontractor seeking to establish that a good faith effort, as required by Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, has been made to fill all training positions with lower income area residents; and fill all employment positions identified during this project, and shall attempt to recruit from the appropriate areas, the necessary number of lower income residents through local advertising media, signs placed at the proposed site, and community organizations, and public and private institutions operating within or serving the service area.

End of Section 3 Definition

**SAMPLE
Contract for Service
(Contract No. :WHA24.09)**

This **Contract for PLUMBING SERVICE AUTHORITY WIDE AS LISTED** (the "Contract") made this the ___ day of _____ by and between the HOUSING AUTHORITY OF THE CITY OF WILMINGTON, NORTH CAROLINA (the "Authority"), whose address is 1524 S. 16th Street, Wilmington, North Carolina and _____ ("Contractor") whose address is _____.

Recitals

WHEREAS, the Authority is a public body and body corporate and politic organized under the laws of the State of North Carolina;

WHEREAS, the Authority has selected the Contractor to perform the services describe in this Contract in accordance with the Authority's procurement policy;

WHEREAS, the Contractor has the knowledge and experience required to fully perform the scope of work herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good valuable consideration hereby acknowledged, the parties hereto agree as follows:

Section 1. Contract Performance

The Contractor shall perform all tasks set forth in the "Scope of Work" attached as Exhibit A and the Project Manual.

Section 2. Statement of Work

The Contractor shall furnish all labor, material, tools, equipment, transportation, supervision and related services to perform and complete all work required under this Contract. All work shall be in strict conformance with the Contract, as amended.

In its performance of the work under the Contract, the Contractor shall perform all work in a prompt and efficient manner, as well as use its best efforts to **minimize disturbance to residents at the Authority's premises.**

Section 3. Changes

The Authority may at any time, by written order, and without notice to the sureties, if any, make changes within the scope of the Contract (including the Scope of Work and Project Manual in the services to be performed or supplies to be delivered by the Contractor.

If any such change causes an increase or decrease in the hourly rate or the time required for performance of any part of the work under the Contract, or otherwise affects the conditions under which the Contract shall be performed by the Contractor, the Authority shall make an equitable adjustment in the hourly rate, the delivery schedule, or other affected terms, and shall modify the Contract accordingly.

The Contractor must assert its right to an equitable adjustment under this Section within thirty (30) days from the date of receipt of the written order for change. However, if the Authority decides that the facts justify it, the Authority may receive and act upon a proposal submitted before final payment of the contract.

Failure to agree to any adjustment shall be a dispute which shall be resolved under Section 18. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the Authority.

If the contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of the contract, the contractor shall pay to the Housing Authority of the City of Wilmington liquidated damages in the sum of **\$50.00** per day for each day of delay.

Disputes: Failure to complete the project, or any part thereof, on a specified date or dates shall not form a basis for a contractor's claim for extra compensation. No claims by a contractor for extra compensation or adjustments will be allowed on account of deletions of work items or delay or failure of others to complete work.

Default: If the Housing of the City of Wilmington deems it inexpedient to require the Contractor to correct work injured or not done in accordance with the contract, an equitable deduction from the contract price shall be made by agreement between the contractor and the Housing Authority of the City of Wilmington, subject to prior approval of HUD and subject to settlement in case of dispute, as herein provided.

Section 4. Contract Price

Prices for the Contract shall be as follows:

- A. For services as specified in the Scope of Work and Project Manual, Contractor shall be paid for such services, not to exceed _____
Contractor exceeds the above stated Not-to-Exceed amounts at their own risk.

Section 5. Contract Term

The Contract shall commence on _____ and end on _____ with an option exercisable by the Authority to extend the contract for two (2) additional one (1) year periods, unless terminated sooner by either party in accordance with the provisions of the Contract. Contractor will be notified by letter if an extension is granted.

After the Contract has been executed by the Authority and delivered to the Contractor, the Contractor shall deliver a fully executed original of the Contract to the Authority no later than ten (10) days after delivery by the Authority. If the fully executed original Contract is not delivered to the Authority within the time specified above, the Authority may in its discretion cancel the award and nullify the Contract.

Section 6. Insurance Requirements

Before work begins, the Contractor shall procure from a reputable insurance company authorized to do business in the State of North Carolina the following insurance policies that provide (at a minimum) the following coverage:

- A. **Commercial General Liability** - \$1,000,000 per occurrence combined single limit with a \$2,000,000 annual aggregate for bodily injury liability and property damage liability, including premises and/or operations, independent contractors, products and/or completed operations, broad form property damage and commercial umbrella coverage, and a contractual liability endorsement.
- B. **Commercial Auto Policy** - \$1,000,000 each occurrence combined for bodily injury liability and property damage liability, including owned vehicles, hired and non-owned vehicles, and employee non-ownership.
- C. **Worker's Compensation and Employers' Liability** - coverage for all employees to the statutory limits in compliance with state and federal law; employer's liability of \$500,000 each accident; \$500,000 bodily injury by disease each employee; \$500,000 bodily injury by disease policy limit.

The Authority shall be named as an additional insured on the contractor's commercial general liability and business auto liability. Current, valid insurance meeting the requirements shall be maintained during the entire duration of the Contract. Renewal certificates shall be sent to the Authority thirty (30) days prior to any expiration date. The Authority shall be provided written notification in the event of cancellation or modification by either Contractor or Contractor's insurer of any coverage required under the Contract no less than thirty (30) days prior to such cancellation or modification.

The Contractor shall furnish the Authority with a Certificate(s) of Insurance evidencing the coverage required hereunder. It shall be unacceptable for any Certificate of Insurance to

contain language or wording to the effect that the insurer shall have no liability for failure to provide the prior notices required hereunder.

It shall be the responsibility of the Contractor to ensure that any agreements between Contractor and sub-contractors contain the same insurance requirements as set forth in the Contract.

Section 7. Payment and Performance Bonds Requirements, if applicable.

The Contractor shall provide to the Authority payment and performance bonds naming the Authority as a dual obligee in an amount not less than the full value of the Contract. The Contractor shall not have done or permitted anything to be done that would affect the coverage of any performance or labor and material payment bonds required by the terms of the Contract and, upon demand of the Authority, the Contractor shall have obtained a written statement from the bonding company or companies assuring that such coverage continues in full force and effect.

Section 8. Billing and Payment

The Contractor shall submit an original copy of each invoice containing contract number, location and signature of property manager to ensure all work has been performed as requested, to the Authority at 1524 S. 16th, Wilmington, N.C. 28401, Attn: Finance Department. The Authority shall pay the Contractor within 30 calendar days following receipt of an acceptable invoice.

The Authority will not be responsible for any equipment on site.

Billing: Only approved work will be covered under this contract. Approved work definition: Work that has been approved by the property manager. There shall be a PO number provided to the contractor from the Housing Authority prior to the start of any work that has been approved.

Section 9. License

During the term of the Contract, the Contractor shall maintain the proper license(s) under applicable state and local laws as required by the Authority, to perform all work under the Contract.

Section 10. Termination for Convenience

The Authority may terminate the Contract, in whole or in part, for the Authority's convenience. The Authority shall terminate by delivering to the Contractor a written notice of termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (a) immediately discontinue all services affected (unless the notice directs otherwise); and (b) deliver to the Authority all information,

reports, papers, and other materials accumulated or generated in performing the Contract, whether completed or in process.

Upon termination for the convenience by the Authority, the Authority shall be liable to the Contractor for reasonable and proper costs resulting from such termination (and upon the receipt by the Authority of a properly presented claim setting out in detail) including: (i) the total cost of the work performed to date of termination; (ii) the cost of settling and paying claims under subcontracts and material orders for any work performed and materials and supplies delivered to the site, payment for which has not been made by the Authority to the Contractor; (iii) the cost of preserving and protecting the work already performed (provided that such work was approved by the Authority), until the Authority or a party designated by the Authority takes possession thereof or assumes responsibility therefore.

Section 11. Termination for Cause

The Authority may terminate the Contract, in whole or in part, for cause. "Cause" shall include, but not be limited to: (a) failure of the Contractor to fulfill its obligations under the Contract; (b) falsification by any officer, employee or agent of the Contractor of any document or information submitted by the Contractor past or present in connection with the subject matter of the Contract; (c) Contractor's bankruptcy, insolvency, assignment for the benefit of creditors, marshaling of assets, or other such events; or (d) occurrences reasonably justifying the Authority's opinion that the Contractor is about to become unable to meet its obligations under the Contract.

The Authority shall terminate the Contractor for cause by delivering to the Contractor a written notice of termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the Authority all information, reports, papers, and other materials accumulated or generated in performing the Contract, whether completed or in process.

If the termination is for cause, the Authority may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the Authority, any work as described in Subsection 11. (ii) above, and compensation be determined in accordance with the provisions set forth in Section 3 above; (2) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the Authority; and/or (3) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the Authority by the Contractor.

Section 12. Reports and Records

The Contractor shall provide all reports pertaining to its performance of the Contract reasonably required by the Authority.

The Authority, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three (3) years after final payment under the Contract, be provided access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to the Contract for the purpose of making audit, examination, excerpts, and transcriptions.

Section 13. Assignment

The Contractor shall not assign or otherwise transfer any of its obligations or interest under the Contract without the prior written consent of the Authority.

Section 14. Equal Opportunity

The Contractor shall comply with the provisions of any federal, state, or local laws prohibiting discrimination on the grounds of race, color, sex, age, creed, national origin, marital status or handicap, including Title VI of the Civil Rights Act of 1964 (Public Law 88352,78 Stat. 241), Title VII of the Civil Rights Act of 1968 and Section 504 of the Rehabilitation Act of 1973.

Section 15. Authority's Waiver of Claim

In the event of the suspension or termination of the Contract, the Contractor shall remit to the Authority any unexpended balance of payments made by the Authority under this Agreement. The Authority's acceptance of the Contract remittance shall not constitute a waiver of any claim that the Authority might have against the Contractor.

Section 16. Indemnification

The Contractor shall protect, defend, indemnify and hold the Authority, its commissioners, officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of the Contract and/or the performance hereunder that are due to the omission, negligence or action of the Contractor, its officers, employees, or agents. The Contractor further agrees to investigate, handle, respond to, provide defense for, and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

Section 17. Third Party Relationships

The Contract shall not be construed to create any relationship of third-party beneficiary involving the Authority. The Contractor shall include in all contracts, subcontracts, or other agreements with other parties relating to the Contract an acknowledgment by those parties that this Contract does not create any relationship of third-party beneficiary.

Section 18. Dispute Resolution

All disputes arising under or relating to the Contract in connection with the Contractor's claims, except for disputes arising under provisions contained in Section II of the General Conditions for Non-Construction (Form HUD-5370-C) which is attached to the Contract as Exhibit E, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this Section.

All claims by the Contractor shall be made in writing and submitted to the Authority. A claim by the Authority against the Contractor shall be subject to a written decision by the Authority.

The Authority shall, with reasonable promptness, but in no event in no more than sixty (60) days, render a decision concerning any claim hereunder. Unless the Contractor, within thirty (30) days after receipt of the Authority's decision, shall notify the Authority in writing that it takes exception to such decision, the decision shall be final and conclusive.

Provided the Contractor has (i) given the notice within the time stated above, (ii) excepted its claim relating to such decision from the final release; and (iii) brought suit against the Authority not later than one (1) year after receipt of final payment, or if final payment has not been made, not later than one (1) year after the Contractor has had a reasonable time to respond to a written request by the Authority that it submit a final voucher and release, whichever is earlier, then the Authority's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.

The Contractor shall proceed diligently with performance of the Contract, pending final resolution of any request for relief, claim, appeal, or action arising under the Contract, and comply with any decision of the Authority.

Section 19. Notices, Demands, Approvals and Verifications.

All notices required to be given hereunder shall be in writing and shall be deemed served at the earlier of (i) receipt; (ii) the business day following deposit with a naturally recognized overnight courier service, postage prepaid for overnight delivery and addressed to the parties at their applicable addresses; or (iii) four (4) business days after deposit in registered, certified or first-class United States mail, postage pre-paid, return receipt requested and addressed to the parties at their applicable addresses. For purposes of notice, the following addresses, or such other addresses as may from time to time be designated by written notice given as herein required shall be the parties' applicable addresses:

The Contractor:

Attn: _____

The Authority:

Housing Authority of the City of Wilmington, North Carolina
1524 South 16 Street
Wilmington, NC 28402
Attention: CEO

Section 20. Section 3

The work performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1986, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall to the greatest extent feasible be directed to low and very low-income person, particularly persons who are recipients of HUD assistance for housing.

The parties agree to comply with HUD regulations in 24 CFR part 135 which implement Section 3. As evidenced by its execution of the Contract, the Contractor certifies that it is under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

Section 21. Independent Contractor

The Contractor agrees that it is an independent contractor, and this Agreement shall not be construed as establishing a joint venture, partnership, or, any principal-agent relationship between the Authority and the Contractor. Employees of the Contractor shall remain subject to the exclusive control and supervision of the Contractor, which is solely responsible for their compensation and any claims arising there from.

Section 22. Compliance with Laws

The Contractor shall comply with all laws, ordinances, rules and regulations pertaining to performance of work under or in connection with the Contract, and shall hold the Authority harmless against any fine, penalty, or damage for any actual negligent failure on the part of the Contractor to comply therewith.

Section 23. Entire Agreement

The Contract constitutes the entire agreement between the Authority and the Contractor and supersedes all prior oral and written agreements, if any, between the parties.

Section 24. Contract Documents

The Contract shall consist of the following components which are incorporated herein by reference:

- A. Scope of Work (Exhibit A)
- B. The Project Manual dated ___N/A___ (Exhibit B) if applicable.
- C. Instructions to Bidders for Contract (Form HUD-5369) (Exhibit B)
- D. Representations, Certifications and Other Statements of Bidders (Form HUD-5369C) (Exhibit D)
- E. General Conditions for Non-Construction Contracts, Section II - (With Maintenance Work) (Form HUD-5370-II) (Exhibit E)
- F. Certification Regarding Debarment and Suspension (Form HUD-2992) (Exhibit F)
- G. Equal Employment Opportunity Certification (Form HUD-92010) (Exhibit G)
- H. Section 3 Compliance Certification (Exhibit H)
- I. Notice to Proceed (Exhibit I) if applicable.
- J. The Invitation for Bid **WHA24.09** including all amendments and addenda, (provided, however, in the event that any provision in the Contract is inconsistent or conflicts with any provision in the Request for Proposals, the provision in the Contract shall govern) Entire Packet.
- K. The Contractor's bid form dated _____ (provided, however, in the event that any provision in the Contract is inconsistent or conflicts with any provision in the Contractor's bid form, the provision in the Contract shall govern)

IN WITNESS WHEREOF, the parties thereto have caused this instrument to be executed in two (2) original counterparts as of the day and the year first above written.

AUTHORITY:

HOUSING AUTHORITY OF THE CITY OF WILMINGTON, NORTH CAROLINA

By:

C.E.O. Tyrone Garrett

Date:

CONTRACTOR:

By: _____

Name:

Title:

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Exhibit A

Scope of Work
(See Attached)

SCOPE OF WORK (SOW)/TECHNICAL SPECIFICATIONS (T/S):

WHA is seeking proposals from qualified entities to meet the following requirements in providing **PLUMBING SERVICE** maintenance and repair services to WHA owned properties throughout Wilmington, N.C. There are approximately 1000 units.

WHA is seeking quotes from qualified, licensed independent Contractor(s) with demonstrated professional competence and experience to provide all labor, equipment, goods, and supplies necessary to provide **PLUMBING SERVICE** for multi-story and single-story buildings.

WHA intends to create a “pool” of Contractor(s) to provide **PLUMBING SERVICE** utilizing various Contractor(s) which will be available on an as-needed basis. The actual number of Pool participants chosen will depend on the number of qualified proposals received.

GENERAL REQUIREMENTS:

- Contractor(s) shall perform all **PLUMBING SERVICE** on an as-needed basis at all WHA properties with no exceptions.
- The contractor must be willing to service all WHA properties during normal business hours and on an after-hours basis.
- Contractor(s) shall commence and end all services on the same workday unless approved by WHA in advance. Contractor(s) shall make all effort to reduce to a minimum any inconvenience to the residents of WHA.
- Contractor(s) shall conduct all non-emergency work during normal working hours unless deemed by WHA to be disruptive to the normal operations of the organization or an emergency.
- Contractor(s) shall arrive at the property location ready to commence work. Contractor arrival to the property location for emergency calls shall be within one (1) hour after notification by WHA, including nights, weekends, and holidays. Contractor(s) shall call or check-in with the WHA representative who assigned the work within thirty (30) minutes of initial call or notification of need for service and provide estimated time to be on property.
- Contractor shall report to the Property Manager upon arrival and when leaving.
- If PLUMBING will be out of service for more than four (4) hours due to the non-availability of a part or extended time needed for repair, the Contractor shall immediately call the WHA representative who assigned the work and inform him/her of the situation and estimated time of completion and make recommendations to restore service temporarily so as to minimize residential impact.

- Contractor(s) shall inform WHA Procurement within two (2) working days of any change in contact information, including but not limited to contact personnel, mailing address, physical address, phone numbers and email addresses.
- Contractor(s) shall only invoice WHA for the time spent on the property. WHA shall not pay for time spent in route or traveling to acquire parts/supplies.
- Invoices shall show arrival and departure times to and from the property of all Contractors and employees responding for service.
- Contractor(s) shall minimize overstaffing for minor repairs. If Contractor is found to be overstaffing for repairs, based upon customary trade practices, WHA reserves the right to only pay for customary trade practices. WHA shall not be responsible for trip charges and/or service charges. WHA shall not pay for trip charges or hourly charges if Contractor delivers wrong unit for installation and needs to leave the property to get the correct unit and come back.
- Contractor(s) shall provide Dispatcher services – 24 Hours/7 Days a week including weekends and holidays so that the Contractor(s) shall respond to calls for service to any WHA property.
- Contractor(s) shall provide estimates for repairs when requested. If WHA deems such quote to be unreasonable WHA reserves the right to request quotes from other Contractor(s) for such service. Estimates shall be provided within twenty -four (24) hours.
- Contractors are required to contact management via phone or email at time of completing the service for final inspection by the Property Manager. Failure to notify Property Managers as required may result in delay of payments and/or termination. Contractor shall provide a statement of work and signed receiver indicating the work performed and acknowledging its completion. A list of WHA employee's names and numbers who are responsible for accepting all work performed by the contractor will be provided at the time of award.
- Contractor shall have a general idea of the scope of work prior to commencement in order to minimize **PLUMBING SERVICE** downtime. Also, items needed for possible replacement shall be confirmed prior to delivery to avoid PLUMBING downtime.

Licensing, Permits, and Safety

- Contractor(s) shall comply with and perform all **PLUMBING SERVICE** in accordance with all applicable federal, state and local laws, rules, regulations, ordinances, codes and manufacturer's instructions, and shall obtain any licenses or permits required under this IFB to do the specified work. The Contractor(s) must disclose:
- Complaints with the City of Wilmington and the State of North Carolina and their resolution.
- PLUMBING license Law or Board rules violations and citations or administrative penalties.
- License reprimand, probation, suspension, or revocation dates.
- Contractor(s) shall practice acceptable safety precautions so as not to cause harm to any persons or property while performing services under this IFB or any resulting contract. Contractor(s) shall follow industry safety standards and use only industry approved safety equipment in accordance with the manufacturer's specifications in the performance of all duties.
- Contractor(s) shall only utilize licensed, trained, and experienced employees to perform the work required on WHA properties.
- Contractor(s) and its employees shall have the relevant licenses required by both the State of N.C. and for the City of Wilmington.
- Contractor(s) or authorized Sub-Contractor(s) shall guarantee all installations to meet and pass City of Wilmington inspections. Should a PLUMBING installation or repair made by Contractor(s) or authorized Sub-Contractor(s) not pass inspection, Contractor(s) shall be responsible make all repairs necessary to ensure the installation or repair passes inspection at no additional cost to WHA.
- Contractor(s) shall acquire all required permits to complete requested work. This requirement should be accounted for as the cost of doing business and included in the hourly pricing submitted to WHA.
- Contractor(s) shall pay all of its employees, including any and all approved Sub-Contractors, at least the legal minimum wages as determined by the United States Department of Labor and the United States Department of Housing and Urban Development and Department of Labor Prevailing Wage. Wage Determinations can be

accessed via the Department of Labor website, www.wdol.gov.

Equipment and Parts

- Parts shall be invoiced at Contractor's wholesale cost plus the mark-up for profit and cost for handling as annotated on Contractor's Fee Submission Form. WHA reserves the right to audit Contractor's invoices at its sole discretion. Contractor(s) shall make available to WHA any requested invoice showing the price Contractor(s) paid for the part, within three business days of request or WHA shall not be obligated to pay for the part.
- WHA reserves the right, if in its best interest to do so, to request a change in products (i.e. brand or type of product) used by the contractor should the produce be deficient and/or not in accordance with WHA's

Standards

- Contractor(s) shall provide at least a one (1) year warranty on all parts and labor provided as a result of this IFB and resulting contract.
- Contractor(s) must provide, at Contractor's own expense, all equipment, labor, materials, supplies, tools, etc., necessary to perform all of the required services, under this IFB and any resulting contract. Contractor(s) shall provide proper equipment. WHA will not pay extra man hours when labor saving devices are readily available; for example, using a shovel when a backhoe is customarily used for the service to efficiently and effectively provide **PLUMBING SERVICE**.
- Contractor(s) shall maintain vehicles that are used to respond to calls for service well stocked with commonly used **PLUMBING** supplies and equipment so as to eliminate delays and/or interruption of service.
- WHA shall retain salvage rights on any replaced equipment. However, if the replaced equipment is of no value to WHA, it will be the responsibility of the Contractor(s) to dispose of the equipment.

Contractor Responsibilities

- Contractor shall perform criminal history checks and drug screening test on all prospective employees performing work under this IFB or coming onto a WHA property and any resulting contract and provide summaries of the results to the Authority if requested. For the purposes of this section, the term "employees" includes contractor. Prospective employees whose criminal background check discloses a misdemeanor or felony involving crimes of moral turpitude, sexual offenses or harm to persons or property shall not be employed to perform work under this IFB or any

resulting contract. Contractor is required to perform drug screening of all employees and to ensure acceptable test results. Criminal history and drug screening checks will be completed at the sole expense of the contractor. Any employee of the Contractor suspected of being under the influence of drugs and or alcohol will be reported to the Authority's Compliance and Safety Operations Department and/or other local law enforcement. If the employee is determined to be under the influence of drugs or alcohol in any form or manner or believed by proper authority to be dealing in illicit sale of alcohol or drugs they will be removed and shall not be allowed to return to any job site on the Authority's property. The Contractor's contract may be suspended and/or terminated should such a situation occur or if the Contractor fails to submit results pursuant to this section.

- Local union drug testing cards are acceptable as long as the strictest of the requirements of this IFB and local union requirements are met. However, the Contractor remains responsible for monitoring that drug testing is being completed and ensuring acceptable results.
- Contractor(s) shall provide uniforms and ID Badges identifying Contractor for all employees working on WHA's properties. No employees will be allowed on WHA's properties out of uniform and without his/her ID badge on his/her person. Contractor(s) must submit a picture of the uniform and a sample of his/her ID badge if requested by WHA.
- Contractor's personnel shall be neat and conduct all work in a professional and efficient manner. If any employee of Contractor is deemed unacceptable by WHA, Contractor shall immediately replace such personnel with an acceptable substitute to WHA.
- The contractor and its employees shall always represent themselves in a courteous and professional manner. All posted driving and speed regulations shall be observed.
- Contractors, sub-contractors, and employees will be required to follow all WHA's policies while on site.

Work Site

- Upon completion of the work, Contractor(s) shall clean up the area where the work was performed, and Contractor(s) shall remove any debris generated by the repairs from WHA premises. At no time, will Contractor(s) discard debris into any WHA refuse container.

- Contractor(s) shall clearly mark all work areas that might reasonably be expected to endanger the health and safety of residents, guests, or any other persons. Contractor(s) will provide such signs, markers and barricades as required to identify all work areas and minimize inherent dangers.
- The contractor shall be responsible for notifying WHA immediately of any damages (i.e. fire, container leaking) deemed to be a health or safety hazard whether the damage is caused by the contractor or other means.
- The contractor shall be responsible for contacting N.C. utilities protection services prior to digging to ensure no damage is done to underground utilities.
- Conservation of Utilities – The Contractor shall practice utility conservation in all WHA facilities. The Contractor shall be responsible for operating under conditions, which preclude the waste of utilities, which shall include:
 - Lights shall be used only in areas where and when work is being performed.
 - Water faucets or valves shall be turned off after the required usage has been accomplished.
 - Mechanical equipment controls for heating, ventilation, and air conditioning systems shall not be adjusted by the Contractor or by Contractor's employees other than as required to test or complete the work assigned.

Invoices

- Contractor shall not perform any services without a Purchase Order Number. If Contractor performs services without a Purchase Order number, WHA shall not be required to pay Contractor for those services or materials.
- All invoices must have a valid PO number.
- All Invoices must include the date property was serviced in the description of the service. Invoices shall not be backdated; the date on the invoice shall match the date the invoice is submitted to WHA or the date the invoice is placed in the mail. Invoices which are not dated in accordance with this section will be rejected and the Contractor will need to submit a revised invoice to receive payment.
- All invoices must be submitted within two weeks for services performed. No Contractor may invoice for services not rendered. Contractors violating this section may be terminated.

- WHA will not pay invoices until services are fully completed as scheduled. Contractor shall provide a statement of work and signed receiver indicating the work performed and acknowledging its completion.
- Invoices shall be sent to Accounts Payable, 1524 South 16th Street Wilmington N.C. 28401

Performance Standards

- For each time the Contractor is late to arrive for a scheduled service, the Contractor's fee may be reduced 10% for that service.
- Failure to comply with the emergency response time may result in a reduction of the Contractor's fee by 15% for that service.

The Property Manager or Maintenance Supervisor may waive the fee reductions at their discretion after discussing extenuating circumstances with the Contractor. Such waiver shall be in writing at the time of the service.

Exhibit B

General Contract Conditions, Non-Construction (HUD 5370-C)

and

Supplemental General Conditions

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban
Development
Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 3/31/2020)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (without maintenance) greater than \$105,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$150,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$150,000 – use Sections I and II.

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
 - (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:

- (i) appeals under the clause titled Disputes;
- (ii) litigation or settlement of claims arising from the performance of this contract; or,
- (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

ATTACHMENT C

Instructions to Offerors (HUD 5369 B)

Instructions to Offerors Non-Construction

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informallities and minor irregularities in offers received,
- and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here.]

ATTACHMENT D

Certifications and Representations Offerors (HUD 5369-C)

**Certifications and
Representations
of Offerors
Non-Construction Contract**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No: 2577-0180 (exp. 7/30/96)

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

(1) has, has not employed or retained any person or company to solicit or obtain this contract; and

(2) has, has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

(a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

Black Americans Asian Pacific Americans

Hispanic Americans Asian Indian Americans

Native Americans Hasidic Jewish Americans

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

(1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:

ATTACHMENT E

Certification Regarding Debarment and Suspension (Form HUD-2992)

Certification Regarding Debarment and Suspension

U.S. Department of Housing
and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant		Date
Signature of Authorized Certifying Official	Title	

ATTACHMENT F

Equal Employment Opportunity Certification (Form HUD-92010)

**Equal Employment
Opportunity Certification**
Excerpt From 41 CFR §60-1.4(b)

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Department of Veterans Affairs

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address

By

Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

- (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by referenced to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.